

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 13-CR-005 (LSA)

ANTONIO "TONY" CHAKONAS,

Defendant.

PROPOSED JURY INSTRUCTIONS

The United States, by its attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Assistant United States Attorney Matthew L. Jacobs, requests that, in addition to its standard jury instruction, the Court give the following jury instructions at the criminal trial of the above-captioned case. The United States also requests the right to supplement these instructions as appropriate.

Respectfully submitted this 6th day of September, 2013.

JAMES L. SANTELLE
United States Attorney

By:

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COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 1

The Charge – The Indictment

The charges against the defendant are in a document called an indictment. You will have a copy of the indictment during your deliberations. The indictment in this case charges that the defendant committed the crimes of using the U.S. mail and interstate wire communications to carry out a scheme to defraud (commonly referred to as mail and wire fraud) and transporting in interstate commerce property that has been stolen, converted or taken by fraud. The defendant has pled not guilty to the charges.

The indictment is simply the formal way of telling the defendant what crimes he is accused of committing. It is not evidence that the defendant is guilty. It does not even raise a suspicion of guilt.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.02.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 2

Statement by Defendant

You have heard testimony that the defendant made a statement to FBI Special Agent Brian Due. You must decide whether the defendant actually made the statement and, if so, how much weight to give to the statement. In making these decisions, you should consider all of the evidence, including the defendant's personal characteristics and circumstances under which the statement may have been made.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.09

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 3

Evidence of Other Acts by Defendant

You have heard testimony and other evidence that the defendant committed acts other than the ones charged in the indictment. Before using this evidence, you must decide whether it is more likely than not that the defendant did the acts that are not charged in the indictment. If you decide that he did, then you may consider this evidence to help you decide the defendant's intent, knowledge, and absence of mistake. You may not consider it for any other purpose. Keep in mind that the defendant is on trial here for mail fraud, wire fraud, and transporting in interstate commerce property that has been stolen, converted or taken by fraud, not for the other acts.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.11

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 4

Recorded Conversations/transcripts

You have heard a recorded conversation and seen a video recording. This is proper evidence that you should consider together with and in the same way you consider the other evidence

You were also given transcripts of the conversations on the recordings to help you follow the recordings as you listened to them. The recordings are the evidence of what was said and who said it. The transcripts are not evidence. If you noticed any differences between what you heard in a conversation and what you read in the transcripts, your understanding of the recording is what matters. In other words, you must rely on what you heard, not what you read. And if you could not hear or understand certain parts of a recording, you must ignore the transcripts as far as those parts are concerned. You may consider a person's actions, facial expressions, and lip movements that you are able to observe on a video recording to help you determine what was said and who said it.

[I am providing you with the recordings and a device with instructions on its use. It is up to you to decide whether to listen to a recording during your deliberations. You may, if you wish, rely on your recollections of what you heard during the trial.]

[If, during your deliberations, you wish to have another opportunity to view a transcript as you listen to a recording, send a written message to the court security officer, and I will provide you with the transcript.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.14

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **5**

Prior Inconsistent Statements – Defendant

You have heard evidence that before the trial, the defendant made statements that may be inconsistent with his testimony here in court. You may consider an inconsistent statement by the defendant made before the trial to help you decide how believable the defendant's testimony was here in court, and also as evidence of the truth of whatever the defendant said in the earlier statement.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.04.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 6

Summaries Received in Evidence

Certain summaries and charts were admitted in evidence. You may use those summaries as evidence even though the underlying documents are not here.

[The accuracy of the summaries and charts has been challenged. The underlying evidence has also been admitted so that you may determine whether the summaries are accurate.]

It is up to you to decide how much weight to give to the summaries.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.16.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 7

**Counts One - Six: Wire and Mail Fraud – Elements
(18 U.S.C. § 1341 and 1343)**

Counts One through Six of the indictment charge the defendant with wire fraud and mail fraud. In order for you to find the defendant guilty of these charges, the government must prove each of the following elements beyond a reasonable doubt:

1. That the defendant knowingly devised or participated in a scheme to defraud, as described in Counts One through Six; and

2. That the defendant did so with the intent to defraud; and

3. The scheme to defraud involved a materially false or fraudulent pretense, representation, or promise; and

4. That for the purpose of carrying out the scheme or attempting to do so, the defendant caused interstate wire communications to take place used or caused the use of the United States Mails, in the manner charged in the particular count.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **8**

Definition of Scheme to Defraud

A scheme is a plan or course of action formed with the intent to accomplish some purpose.

A scheme to defraud is a scheme that is intended to deceive or cheat another and to obtain money or property or cause the potential loss of money or property to another by means of materially false or fraudulent pretenses, representations or promises.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **9**

18 U.S.C. §§ 1341 & 1343 Proof of Scheme

In considering whether the government has proven a scheme to defraud, the government must prove that one or more of the false or fraudulent pretenses, representations or promise charged in the portion of the indictment describing the scheme be proved beyond a reasonable doubt. The government, however, is not required to prove all of them.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **10**

18 U.S.C. §§ 1341 & 1343 Definition of Material

A false or fraudulent pretense, representation, or promise is “material” if it is capable of influencing the decision of the person to whom it was addressed.

It is not necessary that the false or fraudulent pretense, representation, promise, omission, or concealment actually have that influence or be relied on by the alleged victim, as long as it is capable of doing so.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **11**

18 U.S.C. §§ 1341 & 1343 Definition of Intent to Defraud

A person acts with intent to defraud if he acts knowingly with the intent to deceive or cheat in order to cause a gain of money or property to the defendant, or another, or the potential loss of money or property to another.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **12**

18 U.S.C. §§ 1341 & 1343 Success Not Required

The mail and wire fraud statute can be violated whether or not there is any loss or damage to the victim of the crime or gain to the defendant. The government need not prove that the scheme to defraud actually succeeded.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **13**

18 U.S.C. § 1343 Wire Communication

Telephone calls, mobile or cellular telephone calls, e-mails, and text messages constitute transmission by means of wire communication.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 14

18 U.S.C. §§ 1341 AND 1343 Use of Mails and Interstate Communication Facility

The government must prove that the United States mails or interstate communication facilities were used to carry out the scheme, or were incidental to an essential part of the scheme.

In order to use or cause the use of the United States mails or cause interstate wire communications to take place, the defendant need not actually intend that use to take place. You must find that the defendant knew this use would actually occur, or that the defendant knew that it would occur in the ordinary course of business, or that the defendant knew facts from which that use could reasonably have been foreseen. However, the government does not have to prove that the defendant knew that the wire communication was of an interstate nature.

The defendant need not actually or personally use the mail or interstate communication facilities.

Although an item mailed or communicated interstate need not itself contain a fraudulent representation or promise or a request for money, it must carry out or attempt to carry out the scheme.

In connection with whether a mailing or wire transmission was made, you may consider evidence of the habit or the routine practice of an organization.

Each separate use of the mail or interstate communication facilities in furtherance of the scheme to defraud constitutes a separate offense.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **15**

**18 U.S.C. § 2314 Transportation of Stolen or Converted
Goods or Goods Taken by Fraud – Elements)**

Counts Seven, Eight, and Nine of the indictment charges the defendant with transportation of goods stolen, converted, or taken by fraud. In order for you to find the defendant guilty of this charge, the government must prove each of the following elements beyond a reasonable doubt:

1. The defendant transported the items identified in the particular count of the indictment in interstate commerce; and
2. The items identified in a particular count of the indictment had a value of at least \$5,000; and
3. The items identified in a particular count of the indictment had been stolen, converted, or taken by fraud; and
4. At the time the defendant transported the items identified in a particular count of the indictment, he; knew they had been stolen, converted, or taken by fraud.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant guilty of that charge.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt as to the charge you are considering, then you should find the defendant not guilty of that charge.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **16**

Interstate Commerce – Definition

The term “interstate commerce” means travel between one state and another state.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. 17

Date of Crime Charged

The indictment charges that the offenses were committed "on or about" certain dates. The government must prove that the offenses happened reasonably close to that date but is not required to prove that the alleged offenses happened on that exact date.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.05

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **18**

Separate Consideration
Separate Consideration – One Defendant
Charged with Multiple Crimes

The defendant has been accused of more than one crime. The number of charges is not evidence of guilt and should not influence your decision.

You must consider each charge and the evidence concerning each charge separately. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any other charge.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.06.

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **19**

Knowingly – Definition

A person acts knowingly if he realizes what he is doing and is aware of the nature of his conduct, and does not act through ignorance, mistake, or accident. In deciding whether the defendant acted knowingly, you may consider all of the evidence, including what the defendant did or said.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.10

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **20**

Aiding and Abetting/acting Through Another

Any person who knowingly aids, counsels, commands or induces the commission of an offense may be found guilty of that offense if he knowingly participated in the criminal activity and tried to make it succeed.

If a defendant knowingly causes the acts of another, then the defendant is responsible for those acts as though he personally committed them.

Authority:

Seventh Cir. Pattern Jury Instructions, § 5.06

Given _____

Refused _____

Modified _____

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. **21**

Punishment

In deciding your verdict, you should not consider the possible punishment for the defendant who is on trial. If you decide that the government has proved the defendant guilty beyond a reasonable doubt, then it will be my job to decide on the appropriate punishment.

Authority:

Seventh Cir. Pattern Jury Instructions 4.08

Given _____

Refused _____

Modified _____